

On March 20, 1943, no claimant having appeared, judgment of condemnation was entered and the product was ordered disposed of as hog feed.

**5097. Adulteration and misbranding of gift packages. U. S. v. 63 Gift Packages. Default decree of condemnation and destruction. (F. D. C. No. 9357. Sample No. 36960-F.)**

These packages consisted of round boxes with snug fitting covers with a heart-shaped window. In the boxes were 10 thin corrugated paper cups surrounding a small wooden fruit basket. Four of the cups contained cookies, 4 contained candies, and the other 2 cups contained products labeled "Grape Flavor Apple Jelly" and "Damson Plum Jelly," respectively. The contents of the box and the fruit basket were short weight.

On February 11, 1943, the United States attorney for the District of Maryland filed a libel against 63 gift packages at Baltimore, Md., alleging that the article had been shipped in interstate commerce on or about January 25, 1943, by R. L. Albert & Son, Inc., from New York, N. Y.; and charging that it was adulterated and misbranded. The article was labeled in part: "To My Valentine."

The article was alleged to be adulterated in that an artificially flavored imitation grape-apple jelly had been substituted wholly or in part for "Grape Flavor Apple Jelly," which it was represented to be.

Misbranding was alleged (1) in that the statements "Net 1 Lb. 10 Oz." on the box and "Net \* \* \* 6 $\frac{2}{3}$  Ozs." on the fruit basket were false and misleading as applied to an article that was short weight; (2) in that the name "Damson Plum Jelly" was false and misleading since the product so labeled failed to conform to the definition and standard of identity promulgated pursuant to law for damson plum jelly; (3) in that the name "Grape Flavor Apple Jelly" was false and misleading since the product so labeled was an artificially flavored imitation grape-apple jelly; (4) in that the "Grape-Flavor Apple Jelly" was an imitation of another food, and its label failed to bear, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated; (5) in that its container was so made, formed, and filled as to be misleading since the heart-shaped window exposed to view only candy, whereas the package also contained cookies and jelly; and furthermore that the fruit basket contained an excessive amount of paper stuffing, and the ingredient statement captioned "Altray-Mar-Zee-Pon" furthered the misleading impression that the container consisted of the marzipan candy fruits, an almond paste product; (6) in that it was in package form and failed to bear a label containing an accurate statement of the quantity of the contents; (7) in that it was fabricated from two or more ingredients and the common or usual name of each such ingredient, required by law to appear on the label, was not prominently placed thereon in such terms as to render it likely to be understood by the ordinary individual under customary conditions of purchase and use; and (8) in that the jar labeled "Damson Plum Jelly" was represented as a food for which a definition and standard of identity had been prescribed by regulations promulgated pursuant to law, but it failed to conform to such definition and standard since its soluble solids content was less than 65 percent, as required by the standard.

On April 1, 1943, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

**5098. Adulteration and misbranding of gift packages. U. S. v. 55 Gift Packages. Default decree of condemnation and destruction. (F. D. C. No. 9762. Sample No. 36975-F.)**

This product consisted of a circular cardboard box with a heart-shaped or egg-shaped window in the lid. In the center of the box was a small wooden berry-type basket containing seven small almond paste imitation fruits in paper cups. Surrounding this fruit basket were the various other items.

On April 6, 1943, the United States attorney for the District of Maryland filed a libel against 55 gift packages at Baltimore, Md., alleging that the articles had been shipped in interstate commerce on or about January 29, 1943, by R. L. Albert & Son, Inc., from New York, N. Y.; and charging that they were misbranded and that one item contained in the packages, "Grape Flavor Apple Jelly," was also adulterated. The article was labeled in part: (Top of box) "To My Valentine," or "Easter Greetings"; (sticker on side of box) "Altray Mar-Zee-Pon Ingredients"; (sticker on fruit basket in box) "Altray Mar-Zee-Pon \* \* \* Net Weight \* \* \* 6 $\frac{2}{3}$  Ozs."; (label on one jar in box) "Grape Flavor Apple Jelly \* \* \* Net 1 $\frac{1}{2}$  oz."; or (label on other jar in box) "Damson Plum Jelly."

The grape flavor apple jelly was alleged to be adulterated in that an artificially flavored grape jelly had been substituted wholly or in part for it.

The fruit basket and grape flavor apple jelly were alleged to be misbranded in that the statements "Net \* \* \* 6 $\frac{2}{3}$  Ozs." on the former, and "1 $\frac{1}{2}$  Oz" on the jar containing the latter were false and misleading since the basket and jar were short

weight. Misbranding was further alleged in that the circular cardboard box and fruit basket were so made, formed, and filled as to be misleading since the heart-shaped or egg-shaped window exposed to view only candy, whereas the package also contained cookies and jelly; the basket contained an excessive amount of paper stuffing, and the ingredient statement for the "Mar-Zee-Pon," appearing on the outside container, furthered the misleading impression that the contents consisted of the marzipan candy fruits, an almond paste product, whereas it consisted also of cookies and jelly. The grape flavor apple jelly was alleged to be misbranded in that the name "Grape Flavor Jelly" was false and misleading as applied to an artificially flavored imitation grape jelly, and in that it was an imitation of another food, grape jelly, and its label failed to bear in type of uniform size and prominence the word "imitation" and immediately thereafter the name of the food imitated. The fruit basket, jar of "Grape Flavor Apple Jelly," and jar of "Damson Plum Jelly" were alleged to be misbranded in that they were food in package form and the jars of jelly and the fruit basket failed to bear a label containing an accurate statement of the quantity of the contents.

On May 8, 1943, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

**5099. Misbranding of gift packages. U. S. v. 19 Gift Packages (and 4 additional seizure actions against gift packages). Default decrees of condemnation. A portion of the product ordered distributed to charitable institutions; the remainder ordered destroyed.** (F. D. C. Nos. 9123, 9124, 9183, 9204, 9488. Sample Nos. 9777-F, 9983-F, 19616-F, 19617-F, 20121-F, 31913-F, 32699-F.)

Between January 3 and March 10, 1943, the United States attorneys for the District of Ohio, the District of Massachusetts, and the Northern District of Texas filed libels against 56 gift packages at Cincinnati, Ohio, 18 packages at Springfield, Mass., 15 packages at Boston, Mass., and 51 packages at Dallas, Tex., alleging that the article had been shipped in interstate commerce within the period from on or about October 16 to 30, 1942, by R. L. Albert & Son, Inc., from New York, N. Y.; and charging that it was misbranded. The article was labeled in part: "Send-A-Song Gift Package \* \* \* 1 lb. 9 oz.," or "Library of Games \* \* \* Net 2 lb. 4 oz."

The article was alleged to be misbranded in that the statements "1 lb. 9 oz.," or "2 lb. 4 oz." were false and misleading as applied to an article that was short weight, and in that it was in package form and failed to bear a label containing an accurate statement of the quantity of the contents.

Between February 10 and April 19, 1943, no claimants having appeared, judgments of condemnation were entered. The lots located at Cincinnati, Ohio, and Dallas, Tex., were ordered distributed to charitable institutions and the remainder was ordered destroyed.

**5100. Misbranding of gift packages. U. S. v. 39 Boxes and 8 Boxes of Gift Packages (and 3 additional seizure actions against gift packages). Default decrees of condemnation and destruction.** (F. D. C. Nos. 9108 to 9110, incl., 9128. Sample Nos. 8855-F, 8857-F to 8860-F, incl., 9570-F, 9760-F.)

On January 6, 1943, the United States attorney for the Eastern District of Louisiana filed libels against a total of 420 gift packages at New Orleans, La., alleging that the article had been shipped in interstate commerce within the period from on or about November 11 to 20, 1942, by A. Newberg & Co. from Babylon and Lindenhurst, N. Y.; and charging that it was misbranded.

The article was alleged to be misbranded in that its containers were so made, formed, and filled as to be misleading in that the packages contained excessive packing medium.

The various shipments of the article were alleged to be misbranded further in one or more of the following respects: (1) The statements "Net Weight 3½ lbs.," or "3¾ Lbs." in the labeling were false and misleading since the packages contained less than those amounts. (2) The article was in package form and failed to bear a label containing an accurate statement of the quantity of the contents. (3) The statement of the quantity of the contents and the name and place of business of the manufacturer, packer, or distributor, required by the act to appear on the label, was not prominently placed thereon with such conspicuousness as to render it likely to be read by the ordinary individual under customary conditions of purchase. (4) The article was in package form and failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor. (5) It was fabricated from two or more ingredients and their labels failed to bear the common or usual name of each such ingredient.

On March 22, 1943, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.